

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Cooper	Team: APU	CCRB Case #: 201702888	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/09/2017 1:26 PM, Tuesday, 04/11/2017	Location of Incident: In front of § 87(2)(b) Park Hill Avenue and Sobel Court	Precinct: 120	18 Mo. SOL 9/9/2018	EO SOL 9/9/2018	
Date/Time CV Reported Thu, 04/13/2017 6:59 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 04/13/2017 6:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Shaw	20841	946241	120 PCT
2. DTS Rudy Anzalone	5617	945472	120 PCT
3. POM Richard Browne	00352	950113	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Richard Browne	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne stopped § 87(2)(b) and an individual.	
B.POM Matthew Shaw	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Matthew Shaw stopped § 87(2)(b) and an individual.	
C.POM Richard Browne	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne frisked an individual.	
D.POM Richard Browne	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne searched an individual.	
E.POM Matthew Shaw	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Matthew Shaw frisked an individual.	
F.POM Matthew Shaw	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Matthew Shaw searched an individual.	
G.POM Richard Browne	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne frisked § 87(2)(b)	
H.POM Richard Browne	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne frisked § 87(2)(b)	
I.POM Richard Browne	Abuse: On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne searched § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Matthew Shaw	Abuse: On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Police Officer Matthew Shaw stopped § 87(2)(b)	
K.DTS Rudy Anzalone	Abuse: On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Detective Rudy Anzalone stopped § 87(2)(b)	
L.POM Matthew Shaw	Abuse: On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Police Officer Matthew Shaw frisked § 87(2)(b)	
M.POM Matthew Shaw	Abuse: On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Police Officer Matthew Shaw searched § 87(2)(b)	
N.POM Matthew Shaw	Abuse: On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Police Officer Matthew Shaw searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		

### Case Summary

On April 13, 2017, § 87(2)(b) filed this complaint via the CCRB's on-line website on behalf of himself, § 87(2)(b) and an unidentified male, known only to the investigation as "§ 87(2)(b)".

On March 9, 2017, at approximately 1:26 p.m., § 87(2)(b) and § 87(2)(b) were in front of § 87(2)(b) in Staten Island, when PO Matthew Shaw and PO Richard Browne, from the 120<sup>th</sup> Precinct, exited their vehicle and stopped them (**Allegations A and B**). PO Browne and PO Shaw then frisked and searched § 87(2)(b) (**Allegations C through F**). Afterwards, PO Browne approached § 87(2)(b) and grabbed his waistband (**Allegation G**). After § 87(2)(b) was stopped, PO Browne frisked and allegedly searched § 87(2)(b) (**Allegations H and I**). PO Shaw and PO Browne left the location. There were no arrests made, and no summonses were issued.

On April 11, 2017, at approximately 3:15 p.m., while near the intersection of Sobel Court and Park Hill Avenue, in Staten Island, PO Shaw and Det. Rudy Anzalone from the 120<sup>th</sup> Precinct, exited their vehicle and stopped § 87(2)(b) (**Allegations J and K**). PO Shaw then frisked and allegedly searched § 87(2)(b) (**Allegations L and M**). PO Shaw then searched § 87(2)(b)'s duffle bag (**Allegation N**). § 87(2)(b) was not arrested and was not issued any summonses.

§ 87(2)(b) recorded both incidents on his cellular phone. Those recordings are embedded below and located in Board Review 28 and Board Reviews 31-33. For summaries of these videos, see Board Review 29. § 87(2)(b), § 87(2)(g)



March 9, 2017.mp4



April 11, 2017-Stop and Frisk.mp4



April 11, 2017-Search.mp4

### Mediation, Civil, and Criminal Histories

- This case was unsuitable for mediation.
- As of September 25, 2017, there was no Notice of Claim filed with the New York City Comptroller's Office (Board Review 1).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

§ 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

### Civilian and Officer Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 17).
- § 87(2)(b)

§ 87(2)(b)

- PO Shaw has been a member of service for nine years and has been the subject of eight allegations stemming from five cases, none of which have been substantiated or § 87(2)(g)
- PO Browne has been a member of service for six years and has been the subject of 15 allegations stemming from five cases.
  - In CCRB case number 201504300, the Board substantiated a search of a person allegation and recommended formalized training. To date, the NYPD has not instituted any discipline.
  - In CCRB case number 201603510, allegations of force, stop, frisk and search of a person were closed as complainant uncooperative.
- Det. Anzalone has been a member of service for nine years and has been the subject of 20 allegations stemming from eight cases, none of which have been substantiated or § 87(2)(g)

### **Potential Issues**

- § 87(2)(b) PO Shaw and PO Browne all identified one of the victims only by the nickname, § 87(2)(b). However, none of them knew § 87(2)(b) given name and did not know any additional identifying information for him. PO Shaw and PO Browne admittedly did not complete any police documentation related to the incident involving § 87(2)(b) on March 9, 2017, which further hindered the investigation's ability to identify him. Without additional identifying information or police documentation, database searches could not be conducted, and § 87(2)(b) remains unidentified. Similarly, § 87(2)(b) and the officers could not identify any additional witnesses that are seen in the video. § 87(2)(b) identified his cousin, "§ 87(2)(b)" as being present but could not provide his real name or any contact information for him. Thus, contact could not be established with § 87(2)(b) § 87(2)(b) or the other witnesses involved, and their statements were not obtained.
- § 87(2)(b), § 87(2)(g)

### **Findings and Recommendations**

**Allegation A- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne stopped § 87(2)(b) and an individual.**

**Allegation B- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Matthew Shaw stopped § 87(2)(b) and an individual.**

§ 87(2)(b) stated that he and approximately seven individuals were standing with § 87(2)(b) who had what appeared to be a marijuana cigarette in his hands. PO Shaw and PO Browne approached § 87(2)(b) and one of the officers said, "I see you rolling up. I can see the weed through the car." After § 87(2)(b) was stopped, PO Browne approached § 87(2)(b) and backed him into the building's alcove, preventing him from leaving. While speaking to § 87(2)(b) PO Browne accused § 87(2)(b) § 87(2)(b) and § 87(2)(b) of smoking marijuana. § 87(2)(b) acknowledged

possibly shaking hands with one of the passersby but denied that he made any physical contact with anyone else, or passed or exchanged any objects with anyone. § 87(2)(b) also denied that he smoked any marijuana before the officers arrived (Board Review 11).

§ 87(2)(b) did not fully recall the incident but stated that he shook hands with § 87(2)(b) though they did not exchange any money or objects between the two of them. § 87(2)(b) denied that any of the men were rolling a marijuana cigarette or that they were smoking marijuana. § 87(2)(b) acknowledged that the area possibly smelled like marijuana since several of the building's tenants blow marijuana smoke out of their apartment windows, but § 87(2)(b) denied that the odor of marijuana emanated from him or § 87(2)(b) (Board Review 15).

As previously discussed, § 87(2)(b) § 87(2)(b) and the other men were unavailable to the investigation, and their accounts of these allegations were not obtained.

PO Shaw stated that from approximately 25 to 30 feet away, he noticed § 87(2)(b) rolling a marijuana cigarette near five to six other individuals. After exiting their vehicle, PO Shaw could smell the odor of marijuana. PO Shaw acknowledged that he knew § 87(2)(b) from past arrests and lists noting arrested individuals from the area. PO Shaw did not recall § 87(2)(b) being present and only acknowledged that he was stopped after watching the video of the incident. PO Shaw initially denied that § 87(2)(b)'s behavior made him believe that he had been smoking marijuana but later stated that he believed that all the individuals that were present were smoking marijuana. PO Shaw denied that anyone was suspected of any other crimes. PO Shaw denied that § 87(2)(b) was stopped and noted that § 87(2)(b) was free to leave if he chose to (Board Review 2 and 13).

PO Browne stated that just before approaching § 87(2)(b) § 87(2)(b) and § 87(2)(b) they were among a group of additional unidentified individuals who dispersed, but since PO Browne did not specifically see any of the unidentified individuals in the group handling the marijuana cigarette, he did not approach them or plan to arrest them. Upon exiting the vehicle, PO Browne smelled the odor of freshly lit marijuana. PO Browne could decipher the smell of freshly lit marijuana because he has had narcotics training and has been involved in at least 50 marijuana-related arrests. Upon approaching § 87(2)(b) and § 87(2)(b) PO Browne no longer smelled marijuana near § 87(2)(b) but he smelled the odor emanating from § 87(2)(b) (Board Review 3 and 14).

PO Browne stated that he was traveling down Bowen Street until he was approximately ten to twelve feet away from a group of individuals standing in front of § 87(2)(b). Among the group, PO Browne saw § 87(2)(b) and § 87(2)(b). PO Browne only recognized § 87(2)(b) and § 87(2)(b) because they are members of the Only the African (OTA) Gang. PO Browne knew members of the OTA gang because he had received lists of gang members from Field Intelligence Officers (FIO) and gang squads. As PO Browne passed the group he saw § 87(2)(b) finish rolling what appeared to be a marijuana cigarette, light it and begin to pass it to either § 87(2)(b) or § 87(2)(b). PO Browne intended to stop § 87(2)(b) § 87(2)(b) and § 87(2)(b) to recover the marijuana cigarette and arrest them for criminal possession of marijuana.

An individual is guilty of criminal possession of marijuana in the fifth degree when they knowingly and lawfully possess marijuana in a public place and such marijuana is burning or

open to public view. N.Y.S. Penal Law, Section 221.10 (Board Review 34). A police officer may stop a person when he reasonably suspects such a person is committing, has committed or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210, 215 (1976) (Board Review 19).

§ 87(2)(b), § 87(2)(g)

**Allegation C- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne frisked an individual.**

**Allegation D- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne searched an individual.**

**Allegation E- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Matthew Shaw frisked an individual.**

**Allegation F- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Matthew Shaw searched an individual.**

**Allegation H- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne frisked § 87(2)(b)**

**Allegation I- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne searched § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) stated that PO Shaw and PO Browne approached § 87(2)(b) first and that they both frisked the outside of § 87(2)(b) clothes. § 87(2)(b) specifically saw PO Shaw pat down § 87(2)(b) waist, the front part of his body and torso. § 87(2)(b) stated that he witnessed PO Browne grab § 87(2)(b) sweatshirt pockets, but he did not recall if PO Shaw ever went inside any of the pockets. PO Browne then walked over to § 87(2)(b) and patted him down, but § 87(2)(b) did not recall the details of the frisk or mention that § 87(2)(b) was searched (Board Review 11).

§ 87(2)(b) stated that he was wearing a hooded sweatshirt and he had a court slip, his cell phone, and his keys in his right front pants pocket and his wallet in his back right pocket. § 87(2)(b) denied that he had any objects in the front pocket of his hooded sweatshirt. § 87(2)(b) recalled that PO Shaw and PO Browne first searched § 87(2)(b) but he did not recall exactly how the search was conducted or where on § 87(2)(b) body PO Shaw and PO Browne made contact. PO Browne reached into § 87(2)(b) front pocket, back pants pockets, and then into the pocket of his hooded sweatshirt. § 87(2)(b) initially denied that PO Browne ran his hands over his pockets, but after watching the video of the incident, § 87(2)(b) recalled that PO Browne frisked the outside of his clothing prior to searching him. § 87(2)(b) stated that while the video did not capture PO Browne reaching into his pockets, it occurred at approximately the 1:29 mark in the video (Board Review 15).

Initially, PO Shaw did not recall frisking or searching § 87(2)(b) and denied observing PO Browne frisk or search § 87(2)(b). After watching the video of the incident, PO Shaw acknowledged that at the 0:11 mark, PO Browne, the officer to the left side of the frame, is seen going into the large front pockets of § 87(2)(b) hooded sweatshirt, the male seen wearing the blue hooded sweatshirt. Between the 0:11 mark and the 0:56 mark, PO Shaw acknowledged that he was depicted searching first the left pocket and then the right pocket of § 87(2)(b) hooded sweatshirt. PO Shaw acknowledged that he then went into both of § 87(2)(b) front pants pockets and shook the back pant pockets. PO Shaw stated that he frisked and searched § 87(2)(b) solely to recover the marijuana. Upon viewing the video at the 1:29 mark, PO Shaw acknowledged seeing PO Browne frisk § 87(2)(b) but denied seeing him frisk or search § 87(2)(b) during the incident. After viewing the video, PO Shaw denied that he had any reason to believe that anyone at the location had a weapon or was armed (Board Review 2 and 13).

PO Browne searched the area around the men for the marijuana cigarette, but it had disappeared and he had no indication of where it went. Since PO Browne saw § 87(2)(b), § 87(2)(b), and § 87(2)(b) all pass the marijuana at one point, and they had all subsequently reached into their pockets, he believed that any or all of the three of them could be concealing the marijuana in their pocket(s). PO Browne asked § 87(2)(b) “Where is it?” and § 87(2)(b) replied, “I don’t know what you are talking about.” PO Browne then frisked § 87(2)(b) pockets solely to obtain the marijuana he believed was hidden there. PO Browne initially stated that he did not search § 87(2)(b) but after watching the video, PO Browne acknowledged that he also reached into § 87(2)(b) front pants pockets. Although PO Browne acknowledged that the video showed PO Shaw frisking § 87(2)(b), PO Browne denied seeing that occur at the time of the incident.

After he approached § 87(2)(b), PO Browne could smell the odor of recently burned marijuana emanating from § 87(2)(b) direction. The smell made PO Browne believe that § 87(2)(b) was possibly concealing the marijuana. PO Browne acknowledged that he frisked § 87(2)(b) but he did not recall where on his body he frisked him. PO Browne also did not recall if he went into § 87(2)(b) pockets or otherwise searched him. PO Browne frisked § 87(2)(b) to recover the suspected marijuana. PO Browne did not recall if § 87(2)(b) had any bulges and he did not recall anything in particular that drew his attention to the part of § 87(2)(b) body that he frisked. Since PO Browne did not recover any marijuana he decided to let the men go without taking any additional police action. PO Browne wrote on his fly page “§ 87(2)(b), § 87(2)(b) 91,” to record that he interacted with them on the date of the incident (Board Review 3 and 14).

§ 87(2)(b) provided a video of the incident that he recorded on his cell phone. The video commences after PO Shaw and PO Browne exit their vehicle and approach § 87(2)(b). The video shows between the 0:10 mark to 0:58 mark, PO Browne and PO Shaw frisked and searched § 87(2)(b). At the 1:17 mark, PO Browne is seen frisking the front part of § 87(2)(b) hooded sweatshirt. The video pans away during the 1:29 mark in the video, where § 87(2)(b) alleged PO Browne reached inside of his pockets. The video is embedded below (Board Review 28 and 31).



March 9, 2017.mp4

A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not. People v. Reid, 24 N.Y.3d 615 (2014) (Board Review 38). Suspicion that an individual has engaged in a drug transaction is an insufficient basis for a frisk. People v. Brown, 204 A.D.2d 994; People v. Clark, 213 A.D.2d 946 (1995) (Board Review 25 and 26).

§ 87(2)(b), § 87(2)(g) [REDACTED]

§ 87(2)(b), § 87(2)(g) [REDACTED]

§ 87(2)(b), § 87(2)(g) [REDACTED]

§ 87(2)(b), § 87(2)(g) [REDACTED]

§ 87(2)(b), § 87(2)(g) [REDACTED]

§ 87(2)(b), § 87(2)(g) [REDACTED]



**Allegation G- Abuse of Authority- On March 9, 2017, in front of § 87(2)(b) in Staten Island, Police Officer Richard Browne frisked § 87(2)(b)**

An attorney was consulted in regards to this allegation.

§ 87(2)(b) was wearing a black hooded sweatshirt and he had his wallet and keys in the same pants pocket, but he could not recall which pocket that was. He had a rolled up paper in one of his pants pockets, but he could not recall which one. PO Browne walked toward § 87(2)(b) and reached his left hand towards the left side of § 87(2)(b)'s pockets, to which § 87(2)(b) interjected, "You don't have a reason to search me." PO Browne replied, "I have reason to search you. You guys are over there smoking" (Board Review 11).

§ 87(2)(b) stated that PO Browne approached § 87(2)(b) who had at least four sheets of paper in his hooded sweatshirt. PO Browne attempted frisk § 87(2)(b)'s sweatshirt, but did not do so because § 87(2)(b) slapped his hand away.

PO Browne stated that before he approached § 87(2)(b) he knew that a month prior § 87(2)(b) had been arrested by other members of the 120<sup>th</sup> Precinct Anti-Crime Team for being in possession of a firearm. PO Browne noticed a thick-cylindrical bulge protruding from § 87(2)(b)'s waistband, similar to how a gun would protrude, but he did not recall which side of § 87(2)(b)'s body the bulge was located. Since PO Browne noticed the bulge protruding from § 87(2)(b)'s waistband, had knowledge of his past weapon arrest, knew him to be an OTA gang member, and because the location is known for ongoing violence, PO Browne believed that § 87(2)(b) may have had a gun. PO Browne stated he only frisked the side of § 87(2)(b)'s body where he noticed the bulge protrude. It was not until after PO Browne felt the bulge and heard the sound of crumpling paper that he discovered it was paper. PO Browne stated that § 87(2)(b) without being asked, lifted his clothing and confirmed that it was hundreds of loose leaf papers which he had rolled into a cylinder and placed under his waistband. Since § 87(2)(b) was wearing either a jacket or a thick sweatshirt, PO Browne could not tell that the bulge was papers before he grabbed the bulge.



March 9, 2017.mp4

At the 0:58 mark in the video embedded above, before he reached for § 87(2)(b)'s waistband, PO Browne is seen asking § 87(2)(b) "What is that just papers?" PO Browne then reaches for § 87(2)(b)'s waistband. PO Browne stated that he did not recall if he noticed § 87(2)(b)'s papers before he frisked § 87(2)(b)'s waistband. After seeing this portion of the video, PO Browne said, since § 87(2)(b) had hundreds of papers rolled at his waistband, he believed it was likely § 87(2)(b) had a weapon concealed inside of the papers (Board Review 3 and 14).

An officer may frisk an individual if he has a particularized reasonable suspicion that the suspect is armed and dangerous. People v. Forest, 77 A.D.3d 511 (2010) (Board Review 38). If a justifiable frisk fails to reveal the existence of a weapon and the basis for the officer's fear for his safety has been abated, the search must stop. People v. Robinson, 125 A.D.2d 259 (1986) (Board Review 39).

§ 87(2)(b), § 87(2)(g)

**Allegation J- Abuse of Authority- On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Police Officer Matthew Shaw stopped** § 87(2)(b)

**Allegation K- Abuse of Authority- On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Detective Rudy Anzalone stopped** § 87(2)(b)

**Allegation L- Abuse of Authority- On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Police Officer Matthew Shaw frisked** § 87(2)(b)

**Allegation M- Abuse of Authority- On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Police Officer Matthew Shaw searched** § 87(2)(b)

**Allegation N- Abuse of Authority- On April 11, 2017, at Park Hill Avenue and Sobel Court, in Staten Island, Police Officer Matthew Shaw searched** § 87(2)(b)

It is undisputed that § 87(2)(b) was stopped by PO Shaw and Det. Anzalone, and that Det. Anzalone told him that he was stopped for the way that he “was grabbing himself.” It is also undisputed that § 87(2)(b) was holding a green bag in one of his hands and that PO Shaw frisked the outside of § 87(2)(b)’s pockets and then searched the bag he had been holding. No weapons or contraband were found as a result of the frisk and search. § 87(2)(b)

§ 87(2)(b) stated that he exited his house, crossed the street twice, and then walked toward the bus stop. § 87(2)(b) was wearing a black hooded sweatshirt and black sweatpants. § 87(2)(b) had his wallet and keys in one of his pockets, but he did not recall where they were. § 87(2)(b) denied that he had any other items in his sweatshirt or in his sweatpants. In § 87(2)(b)’s duffle bag he had a coat, a laptop, a laptop charger and a phone charger. Other than saying hello to a neighbor, § 87(2)(b) did not encounter any other individuals on the street. § 87(2)(b) denied that he shook hands with anyone or that he exchanged any items with anyone.

Shortly after crossing the street, PO Shaw and Det. Anzalone exited their vehicle and approached § 87(2)(b) who began to record the interaction. PO Shaw pulled at the lower front pockets of § 87(2)(b)’s hooded sweatshirt and frisked around his waist and upper body. PO Shaw reached inside both pockets of § 87(2)(b)’s hooded sweatshirt, but did not remove anything from those pockets. PO Shaw opened and searched § 87(2)(b)’s duffle bag, but he did not remove any items from the bag. After searching the bag, PO Shaw handed § 87(2)(b) his bag and then he and Det. Anzalone returned to their vehicle and left the location (Board Review 11). § 87(2)(b) provided two cell phone videos that he recorded which captured the incident immediately after he was stopped by PO Shaw and Det. Anzalone, including PO Shaw frisking § 87(2)(b) and handling § 87(2)(b)’s opened duffle bag (Board Review 28, 32 and 33).



April 11, 2017-Stop and Frisk.mp4



April 11, 2017-Search.mp4

PO Shaw stated that when he and Det. Anzalone were approximately two car lengths away from § 87(2)(b) PO Shaw noticed that § 87(2)(b) was holding his belt and waistband with the same hand. In § 87(2)(b)'s opposite hand, he was carrying a duffle bag. PO Shaw denied that § 87(2)(b) ever reached inside of his waistband. From PO Shaw's observation, the bag appeared to be heavy given the way the bag's straps were elongated, and as such, § 87(2)(b) carried the bag "lower." Since PO Shaw was present for § 87(2)(b)'s firearm arrest in January, the weight of the bag and the way that § 87(2)(b) held his waistband led PO Shaw to believe § 87(2)(b) was concealing a weapon. As PO Shaw and Det. Anzalone passed § 87(2)(b) § 87(2)(b) crossed the street and walked in the opposite direction that PO Shaw and Det. Anzalone were traveling. After turning their vehicle around, PO Shaw saw § 87(2)(b) cross from one side of the street to the opposite side of the street at least three times.

PO Shaw perceived § 87(2)(b)'s behavior of crossing the street multiple times as evasive and that raised his suspicion that § 87(2)(b) had a weapon. PO Shaw stated that he decided to stop § 87(2)(b) for the above reasons. After PO Shaw asked § 87(2)(b) to stop, § 87(2)(b) dropped his bag, slightly turned his back and bladed his body where he had been holding his waistband, which PO Shaw initially thought was an attempt by § 87(2)(b) to shield one side of his body. However, once he turned around, § 87(2)(b) faced the officers and PO Shaw noticed that he was holding onto his cell phone in one hand, but his other hand remained at his waist. PO Shaw still did not see a bulge. PO Shaw did not recall if he went into § 87(2)(b)'s pockets, but he acknowledged that he frisked only § 87(2)(b)'s waistband. After frisking § 87(2)(b)'s waistband, PO Shaw reached inside § 87(2)(b)'s bag in order to recover the firearm he believed he had in his possession based on his prior observations (Board Review 13).

Det. Anzalone initially did not recall the incident. After he reviewed the video, Det. Anzalone stated that his attention was drawn to § 87(2)(b) because the manner in which he was "playing with his waistband" and as § 87(2)(b) walked, one of his hands remained at his waistband. From Det. Anzalone's vantage point, he appeared to be holding something, but he did not see any specific shape of the item he was holding. However, since § 87(2)(b)'s hand was at his waist, it made Det. Anzalone believe that § 87(2)(b) had something hidden in his waistband. Det. Anzalone had not interacted with § 87(2)(b) prior to the incident and he did not know about his past gun arrest. Although Det. Anzalone did not recall doing it at the time of the incident, he acknowledged that the video showed him grabbing § 87(2)(b)'s phone from one of his hands. Det. Anzalone did not observe any bulges on § 87(2)(b)'s waistband after he was stopped. PO Shaw only frisked around § 87(2)(b)'s waistband but Det. Anzalone did not know if PO Shaw searched § 87(2)(b)'s hooded sweatshirt. Det. Anzalone recalled after seeing the video that PO Shaw searched § 87(2)(b)'s bag, but he was unaware what led to the search of § 87(2)(b)'s bag. Det. Anzalone did not see any noticeable bulges on the bag (Board Review 12).

A police officer may stop a person when he reasonably suspects such a person is committing, has committed or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210, 215 (1976) (Board Review 19). Behavior which is susceptible of innocent as well as guilty interpretation will not

generate reasonable suspicion that criminality is afoot. People v. Barreto, 161 A.D.2d 303 (1990) (Board Review 22). Furtive movements and nervous behavior, absent more, will not provide the police with a founded suspicion of criminality. People v. Negroni, 969 N.Y.S. 2d 805 (2013) (Board Review 23). An officer's knowledge of a suspect's past arrest is an insufficient basis on which to find objective suspicion of criminality. People v. Brown, 115 A.D. 3d (2014) (Board Review 29).

To frisk an individual, an officer must have a particularized reasonable suspicion that the suspect is armed and dangerous. People v. DeBour, 40 N.Y.2d 210, 215 (1976) (Board Review 19, 22); People v. Russ, 61 N.Y.2d 693 (Board Review 21). An officer is permitted to search personal items, such as a bag, that are capable of concealing a weapon when the stop and frisk of that suspect's person is valid and when the item is within the suspect's grabbable area. People v. Brooks, 65 N.Y.2d 1021 (1985) (Board Review 40).

Det. Anzalone and PO Shaw both referenced the manner in which § 87(2)(b) was holding his waistband, or holding his hand near his waistband, as being a large indicator that he was in possession of a weapon, and a basis for the stop. § 87(2)(b), § 87(2)(g)

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It is further undisputed that § 87(2)(b) crossed the street more than once, and while the officers reasonably interpreted this as evasive or nervous, thereby heightening their suspicion that § 87(2)(b) was armed, there were also innocuous interpretations of this behavior, including that volunteered by § 87(2)(b) who stated he was merely crossing the street to go to the bus stop.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)  
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§ 87(2)(b), § 87(2)(g)  
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§ 87(2)(b), § 87(2)(g)  
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§ 87(2)(b), § 87(2)(g)  
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§ 87(2)(b), § 87(2)(g)  
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§ 87(2)(b), § 87(2)(g), § 87(4-b)  
[Redacted text block]

§ 87(2)(b), § 87(2)(g), § 87(4-b) [Redacted]  
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Squad: 07

Investigator: \_\_\_\_\_ Daniel Cooper \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date